

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOE WEINKAUF,

Plaintiff,

V.

VERISTONE MORTGAGE, LLC, et al.,

Defendants.

CASE NO. C16-5471-RBL

**ORDER DENYING MOTION FOR
TRO**

THIS MATTER is before the Court on Plaintiff Weinkauf's Motion for a TRO

15 precluding the scheduled foreclosure sale on his home. Weinkauf obtained an eight month,
16 interest only, \$1,047,000 bridge loan from a hard money lender that he sought out on the
17 internet¹. The loan had egregious, but fully disclosed terms, including a 12% interest rate, a 24%
18 default interest rate, the short term, the interest-only payments, and massive fees, closing costs
19 and reserves—the amount disbursed at closing was only \$977,901. Weinkauf variously claims
20 that Veristone “promised it would make him another loan,” that it would help him “find another
21 lender” to take out his bridge loan if it could not make the loan itself, or that it would offer him a

¹ Veristone denies that it is a “hard money lender,” but concedes it is not your typical residential lender.

1 traditional loan if he could not find another lender willing to do so. In any event, he made only
2 the first two payments (possibly from the reserves held back at closing) and could not obtain
3 another loan from Veristone or anyone else.

4 Weinkauf claims generally that he was ‘tricked’ into borrowing the money, that the
5 stated monthly income amount (\$44,000) was a “misrepresentation”—though he admits he
6 signed it and that that amount is in fact his monthly gross. He also argues that the technical
7 aspects of the closing were not done properly; he did not get his three day rescission notice (or
8 his three day rescission period) and he claims the TILA documents are not consistent with the
9 Good Faith Estimate². He claims violations of TILA, the Homeowner Equity Protection Act, the
10 Washington Deed of Trust Act, its Consumer Protection Act, and the Mortgage Brokers
11 Practices Act. He seeks to enjoin the sale (and possibly to rescind the loan, though there is no
12 indication he has formally done so), and damages.

13 Veristone argues that Weinkauf has not made the payments required to enjoin the sale
14 under the DTA and has not complied with the DTA's procedural requirements—perhaps an
15 ironic claim, given the nature of the claims against it—but the Court will address Weinkauf's
16 claim on the merits.

17 The purpose of a TRO is “preserving the status quo and preventing irreparable harm just
18 so long as is necessary to hold a hearing [on the preliminary injunction application], and no
19 longer.” *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers*, 415
20 U.S. 423 (1974); *see also Reno Air Racing Ass’n v. McCord*, 452 F.3d 1126, 1130-31 (9th Cir.
21 2006). To obtain a TRO or a preliminary injunction, the moving party must show: (1) a

23 ² He complains, for example, that he “APR” was 19.141%, while the “interest rate” was
24 supposed to be 12%. But those numbers do not measure the same thing, and on an interest-only
loan with extremely high costs, it is entirely possible that both are accurate.

1 likelihood of success on the merits; (2) a likelihood of irreparable harm to the moving party in
 2 the absence of preliminary relief; (3) that a balance of equities tips in the favor of the moving
 3 party; and (4) that an injunction is in the public interest. *Winter v. Natural Res. Def. Council,*
 4 *Inc.*, 555 U.S. 7, 20 (2008).

5 Traditionally, injunctive relief was also appropriate under an alternative “sliding scale”
 6 test. *The Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008). However, the Ninth
 7 Circuit overruled this standard in keeping with the Supreme Court’s decision in *Winter*.
 8 *American Trucking Ass’ns Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009)
 9 (holding that “[t]o the extent that our cases have suggested a lesser standard, they are no longer
 10 controlling, or even viable”).

11 Veristone argues that Weinkauf cannot meet this standard because, even if he is correct
 12 about the details of the DFI’s findings of technical violations, he cannot prevail on his theory that
 13 Veristone “set him up to fail so that it could take his home.” It also points out that the damages
 14 he could ever recover for these “foot faults” would be a small offset to the money that he admits
 15 he borrowed and failed, almost from the outset, to re-pay. And it argues persuasively that his
 16 CPA damage claims would survive the foreclosure in any event.

17 Weinkauf has almost no chance of success on the merits of his claims, at least any claim
 18 that would permit him to retain the home and the money he borrowed to buy it. He has
 19 established at best that Veristone (and he) rushed the closing. But he has not established that he
 20 was “tricked,” that Veristone “misrepresented” his gross monthly income *to him*, or that he was
 21 the victim of some scheme to take his home. He went full speed into the worst loan this Court
 22 has ever even heard of, and signed numerous disclosures explaining plainly just how bad it was.

1 Nor has Weinkauf established the other elements required for a TRO. The Motion for a
2 TRO is DENIED.

IT IS SO ORDERED.

Dated this 8th of July, 2016.

Ronald B. Lightner

Ronald B. Leighton
United States District Judge